IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL REVISION No. 81/2006

Ramesh Joshi ..... Revisionist

Versus

State of Uttaranchal ..... Respondent

Mr. Pankaj Purohit, Advocate, for the revisionist.
Mr. KS Rautela, AGA, for the State/respondent.

With

CRIMINAL REVISION No. 78/2006

Smt. Neelam Bisht ..... Revisionist

Versus

State of Uttaranchal ..... Respondent

Mr. Prabhakar Joshi, Advocate, for the revisionist.
Mr. KS Rautela, AGA, for the State/respondent.

6th March, 2013

Hon'ble Servesh Kumar Gupta, J.

This judgment an order will dispose of both the above titled revisions as the same have arisen out of the judgment and order of conviction dated 15.3.2005 passed by the Special Judicial Magistrate, Pithoragarh in Criminal Case No. 92/2003, whereby the learned Trial Judge found both the accused revisionist Smt. Neelam Bisht guilty of the offences under Section 420, 471 IPC and sentenced her to undergo two years' rigorous imprisonment for each of the offences along with fine of rupees two thousand for the offence under Section 420 IPC. Ramesh Joshi was convicted for the offences under Section 420/120B IPC and 471/120B IPC and awarded similar punishment as was awarded to Smt. Neelam Bisht. This judgment and order of conviction was sustained by the learned Sessions Judge, Pithoragarh vide his judgment and order dated 9.5.2006 while adjudicating the Criminal Appeals

No. 8 and 7 of 2005 filed respectively by Smt. Neelam Bisht and Ramesh Joshi.

2. This Court rendered hearing to learned Counsel for both the revisionists as well as learned State Counsel. Also perused the papers on record.

3. Theme of the prosecution story is that Smt. Neelam Bisht was the President of Women Unit of Samajwadi Party in district Pithoragarh, while Rajesh Joshi was chauffer of her car. Smt. Neelam Bisht assured PW1 Km. Mamta Aer for the Government job in Kumaon Mandal Vikas Nigam if she parted with rupees forty five thousand as a consideration for the same. Km. Mamta Aer was pursuing her graduation and looking to her family circumstances, she somehow managed to arrange this much money and handed over the same on 31.10.2001 at the residence of Smt. Neelam Bisht. She was assured for the delivery of the appointment letter on that very day after reaching Loha Ghat. So, Km. Mamta Aer accompanied Smt. Neelam Bisht and Rajesh Joshi to Loha Ghat, where an appointment letter was delivered to her, which was subsequently found to be fake and fabricated. So, she lodged an FIR. The matter was investigated and after trial, both the accused revisionists were convicted and sentenced as stated above.

4. Having heard learned Counsel for Smt. Neelam Bisht, this Court feels that there is no material contradiction, irregularity and incongruity in the evidence produced by the prosecution in the trial court against her. The offence is proved against her by formidable evidence. Hence, revision preferred by Smt. Neelam Bisht has no substance and it is liable to be dismissed.

5. So far as the case of co-accused Ramesh Joshi is concerned, it has been argued on his behalf that he was simply a chauffer of Smt. Neelam Bisht and he was constrained to drive her vehicle and sometimes even to stand and sit in her company being a private driver. He did not participate in the crime nor did he motivate the victim even the least for parting with rupees forty five thousand. He did not make any assurance for any Government job to the complainant Km. Mamta Aer.

6. Learned Counsel for the revisionist Ramesh Joshi has drawn attention of this Court towards page no. 3 of the statement of Km. Mamta Aer. In her examination-in-chief itself, she has admitted that Ramesh Joshi did not say anything to her, nonetheless he was present there along with Smt. Neelam Bisht. This statement of victim Km. Mamta Aer finds corroboration from the statement of PW4 Jagdish Kohili, who in his cross-examination, conducted on behalf of Ramesh Joshi, has admitted that Ramesh Joshi neither raised any monetary demand from Km. Mamta Aer nor he gave her any assurance for the Government job. He also did not deliver any appointment letter to her.

7. I have gone through the logic adopted by both the courts below, which has been made the basis for conferring the guilt upon Ramesh Joshi and that logic is based upon the adage “those who stand and wait also serve”. This adage is perfectly good and applicable in the appropriate contexts, but in the case in hand, the revisionist Ramesh Joshi was not standing and waiting, and there is no participation on his part in the plan hatched by Smt. Neelam Bisht to cheat Km. Mamta Aer, as alleged by the prosecution. His entire role cannot be said to be covered by the said adage. Both the courts below

have erred in applying this golden adage to confer the guilt upon Ramesh Joshi.

8. Consequently, for the reasons recorded above, criminal revision no. 81/2006, preferred by Ramesh Joshi, is allowed. His conviction and sentence is hereby set aside. Impugned judgments and orders dated 15.3.2005 and 9.5.2006 passed by the courts below are modified to the extent indicated above. Ramesh Joshi is on bail. His personal bond is cancelled and sureties are discharged. He need not surrender unless wanted in connection with any other case.

9. Criminal revision no. 78/2006, preferred by Smt. Neelam Bisht, is devoid of merit and it is hereby dismissed. Conviction and sentenced awarded to her is affirmed. Smt. Neelam Bisht is on bail. Her bail is cancelled. She shall be taken into custody forthwith for serving out the sentence.

10. A copy of this judgment and order be sent to the court concerned for its compliance. Let the lower court record be sent back.

(Servesh Kumar Gupta, J.)

6.3.2013
Prabodh